Circuit Court for Calvert County
Case No. J-15-00037

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2227

September Term, 2016

IN RE: M.W.

Berger,
Friedman,
Krauser, Peter B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 7, 2017

M.W., appellant, was found by the Circuit Court for Calvert County, sitting as a Juvenile Court, to have violated the compulsory public school attendance law set forth in Md. Code (1978, 2014 Repl. Vol., 2016 Supp.), § 7-301 of the Education Article ("Educ."). M.W. appeals the juvenile court's judgment, raising three issues for our review, which we have rephrased as follows:

> I. Whether the evidence was sufficient to support the juvenile court's finding that M.W. violated the compulsory school attendance laws.
>
> II. Whether M.W. was denied his constitutional rights to due process and a fair hearing when the juvenile court allegedly failed to properly accommodate M.W.'s hearing disability.
>
> III. Whether M.W. was denied his constitutional rights to due process and a fair hearing when the juvenile court allegedly improperly shifted the burden of proof to M.W., applied the wrong evidentiary standard, and denied M.W. his right to compel and cross-examine witnesses.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

During the 2014-2015 school year, M.W.'s son, C.W., was in the third grade at Saint Leonard Elementary School in Calvert County. Between August 2014 and April 2015, C.W. incurred twenty-two absences and late arrivals that were designated by the school as "illegal." C.W. incurred additional absences that were recorded as "legal" absences, with the notation "sick" appearing in the comment line of C.W.'s attendance report.

Near the end of the school year, the State filed truancy charges against M.W. The State alleged that C.W.'s fourteen unlawful absences, eight unlawful tardies, and one

unlawful dismissal constituted a violation of the compulsory school attendance law. Following M.W.'s initial appearance, M.W.'s case was placed on the stet docket "with the conditions that the student in this case, [C.W.], have no more illegal absences and that [M.W.] comply with the Board of Education." The State agreed to enter a *nolle prosequi* if C.W. incurred no illegal absences or tardies for a period of one year.

On July 13, 2016, in response to the State's motion, the case was removed from the stet docket. M.W. was rearraigned on October 31, 2016, and the case proceeded to adjudication on November 17, 2016. The juvenile court found that M.W. had violated Educ. § 7-301 and sentenced him to ten days' imprisonment, all suspended, and three years of unsupervised probation.[1] The court required that M.W. "comply with all educational requirements" during his probation. This appeal followed.

Additional facts shall be set forth as necessitated by our discussion of the issues on appeal.

DISCUSSION

I.

In this appeal, M.W. asserts that the evidence is insufficient to support the juvenile court's determination that he violated the compulsory school attendance laws set forth in Educ. § 7-301 by failing to send his 10-year-old son, C.W., to school on multiple occasions. M.W. contends that the State failed to prove that C.W.'s absences were, in fact, unlawful.

[1] The juvenile court found M.W. not guilty of violating Educ. § 7-301(e)(1) by harboring his son during school hours.

The record reflects that there was sufficient evidentiary support for the juvenile court's ruling.

We review juvenile matters "'on both the law and the evidence.'" *In re Elrich S.*, 416 Md. 15, 30 (2010) (quoting Md. Rule 8-131(c)). "We review any conclusions of law *de novo*, but apply the clearly erroneous standard to findings of fact." *Id.* "The hearing court's ultimate decision, however, will not be disturbed unless 'there has been a clear abuse of discretion.'" *Id.* at 30-31 (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

The standard of review of evidentiary sufficiency that applies when reviewing a case from the juvenile court is the same standard that applies to other criminal cases. *In re James R.*, 220 Md. App. 132, 137 (2014). The Court of Appeals summarized the sufficiency of the evidence standard in *State v. Smith*, 374 Md. 527 (2003), as follows:

> The standard for appellate review of evidentiary sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder. We give due regard to the fact finder's findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses. We do not re-weigh the evidence, but we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.

Id. at 533-34 (internal citations, quotations, and brackets omitted).

Pursuant to Educ. § 7-301, with certain exceptions not relevant here, "each child who resides in [the State of Maryland] and is 5 years old or older and under 18 shall attend

a public school regularly during the entire school year." Educ. § 7-301(a-1)(1). With respect to lawful absences, Educ. § 7-301(b) provides that "[a] county superintendent, school principal, or an individual authorized by the county superintendent or principal may excuse a student for a lawful absence." Pursuant to Educ. § 7-301(c), "[e]ach person who has legal custody or care and control of a child who is 5 years old or older and under 18 shall see that the child attends school or receives instruction as required by this section." "Any person who has legal custody or care and control of a child who is 5 years old or older and under 18 who fails to see that the child attends school or receives instruction under this section is guilty of a misdemeanor . . . ." Educ. § 7-301(e).

M.W. does not challenge that he has legal custody or care and control of C.W., nor does M.W. challenge that C.W. fell within the age range specified in Educ. § 7-301(e). Rather, M.W. challenges the juvenile court's finding that he "fail[ed] to see that [C.W.] attend[ed] school." M.W. specifically asserts that the State failed to prove the specific circumstances under which C.W.'s absences were determined to be unlawful and that the production of school attendance records indicating specific illegal absences was insufficient.

The definitions of "lawful" and "unlawful" absences are set forth in §§ 13A.08.01.03 and 13A.08.01.04 of the Code of Maryland Regulations (COMAR). COMAR § 13A.08.01.03 provides that students "are considered lawfully absent from school, including absence for any portion of the day" only under nine specific conditions: death in the immediate family, illness of the student, court summons, hazardous weather conditions, work (under specific conditions), religious holiday, state emergency,

suspension, and lack of authorized transportation.[2] With respect to illness of the student, COMAR § 13A.08.01.03(B) requires that "[t]he principal or a pupil personnel worker shall require a physician's certificate from the parent or guardians of a student reported continuously absent for illness."

"An absence, **including absence for any portion of the day**, for any reason other than those cited as lawful are presumed to be unlawful and may constitute truancy." COMAR § 14A.08.01.04(A) (emphasis added).[3] COMAR defines a "habitual truant" as a student who "is unlawfully absent from school for a number of days or portion of days in excess of 20 percent of the school days within any marking period, semester, or year." COMAR § 14A.08.01.04(C). The regulation further provides that "[a] local school system has the prerogative of defining habitual truancy in a more but not less stringent manner (for example, unlawful absences in excess of 15 percent of the school days)." *Id.* Walter Williams, an employee of the Calvert County Board of Education ("the Board") and C.W.'s pupil personnel worker, testified that the Board defines a habitual truant in Calvert County

[2] COMAR § 13A.08.01.03(J) further provides that an "other emergency or set of circumstances which, in the judgment of the superintendent or designee, constitutes a good and sufficient cause for absence from school" can also constitute a legal absence.

[3] M.W. asserts that tardy/late arrivals cannot constitute absences because "[t]ardiness is neither mentioned in the statute nor the regulation." Additionally, M.W. points to the Calvert County Public Schools Administrative Procedures for Policy #3005 Regarding Student Attendance, which provides that a student is considered present for a full day if the student is in attendance for four hours or more of the school day. COMAR § 14A.08.01.04(A), however, specifically includes partial absences as absences. Indeed, the regulation does not identify any partial absence due to late arrival that is excluded from the definition of absence.

as "a student that misses 10 percent" of the school days within any marking period, semester, or year.

Mr. Williams testified that C.W. had fourteen illegal absences and eight illegal "lates or tardies" between August 19, 2014 and April 14, 2015, when C.W. was in the third grade, totaling a total of twenty-two illegal absences pursuant to COMAR § 14A.08.01.04(A). Mr. Williams prepared C.W.'s individual student attendance record, which was admitted, without objection, into evidence. Mr. Williams explained that the attendance report was prepared in the course of regularly conducted business activities of the Board, was updated daily, and was prepared contemporaneously with the events contained within the report. Mr. Williams further explained the various codes used within the report to indicate types of absences. Mr. Williams explained that "LEG" was the code for a legal absence, "ILL" was the code for an illegal absence, and "IL" was the code for an illegal late arrival. Mr. Williams testified that C.W. met the Board's definition for "habitual truant" because he had been unlawfully absent or late more than ten percent of the attendance period.

During Mr. Williams's cross-examination, M.W. inquired as to how attendance is recorded and how absences are determined to be "legal" or "illegal." With respect to the way in which attendance is recorded, Mr. Williams explained that the teacher records the attendance and puts it into the computer, after which the school's secretary of attendance verifies that each teacher recorded the attendance for the day. Mr. Williams testified that he was "sure that the attendance on the attendance record is right." Mr. Williams explained

that the determination of whether an absence is legal or illegal is based upon the "State guidelines" and the Calvert County Public Schools code of conduct.[4]

On appeal, M.W. points to his own testimony about the reasons for C.W.'s absences, emphasizing that he testified in detail about C.W.'s health issues, including various instances of strep throat and a weakened immune system stemming from his diagnosis of fetal alcohol spectrum disorder which, M.W. asserts, "prevented [C.W.] from attending school." M.W. emphasizes that the juvenile court did not articulate that it found M.W.'s testimony "not credible" and that the juvenile judge expressly explained that he "fully believe[d] that [M.W.] [wa]s committed to ensuring his son . . . receives a quality education . . . ." M.W. argues that his own "unrebutted testimony" about C.W.'s health issues should have been sufficient to persuade the court to find that M.W. did not violate Educ. § 7-301(c).[5]

M.W. asserts that C.W.'s absences were all due to illness and, regardless, do not meet the standard of habitual truancy, which M.W. argues requires a more significant and continuous loss of education than the twenty-two illegal absences in this case. First, we

[4] Mr. Williams read from the portion of the code of conduct regarding legal and illegal absences. The definition of legal and illegal absences articulated in the code of conduct mirrored the COMAR definition discussed *supra*.

[5] M.W. further argues that the compulsory attendance law does not apply to C.W. because he is a student "[w]hose mental, emotional, or physical condition makes his instruction detrimental to his progress" under Educ. § 7-301(d)(2). This issue was not raised below and, accordingly, is not properly before us on appeal. M.W. testified that he attempted to have C.W. enrolled in the CHIPs program for children with chronic health impairments who have illnesses that keep them out of school for more than eighteen days per year, but he was unable to do so. M.W. did not, however, argue that the compulsory attendance law was inapplicable to C.W.

observe that M.W. testified generally about C.W.'s health issues that interfered with his ability to attend school, but did not identify specific days that C.W. was marked illegally absent when he was absent due to illness. Furthermore, M.W. did not present any evidence addressing the requirement set forth in COMAR 13A.08.01.03(B) that lawful absences due to a student's illness "shall require a physician's certificate from the parent or guardians of a student reported continuously absent for illness." M.W. testified that he "might have written a note in the third grade or I might not," but he at no time testified that he furnished the school with a physician's certificate. M.W. emphasized that he never failed to send C.W. to school "when he was well."

Our task, on appeal, is not to evaluate whether the fact-finder could have concluded differently based upon the evidence presented. As discussed *supra*, the narrow scope of our review is focused upon determining whether "any rational trier of fact could have found the essential elements of" the offense charged. *Smith*, *supra*, 374 Md. at 533. The record reflects that sufficient evidence supported the juvenile court's determination that M.W. violated the compulsory attendance law by failing to send C.W. to school. The juvenile court expressly found that M.W.'s testimony that he would not have kept C.W. home from school without a good reason "fl[ew] in the face of the contemporaneous notations that were made by the teachers and delivered to the attendance secretary." The juvenile court rejected M.W.'s assertion that the attendance had been recorded inaccurately and found that there was not "an acceptable COMAR statutorily valid reason" for C.W.'s absences. In our view, the record supports the ruling of the juvenile court, and, accordingly, we will not disrupt the juvenile court's ruling on appeal.

II.

M.W.'s second contention is that he was denied his constitutional rights to due process and a fair hearing because the juvenile court failed to properly accommodate his hearing disability. Prior to trial, M.W. requested a hearing assistance device for the proceeding using an official accommodation request form provided by the judiciary. M.W. further requested on the form that the court "[e]nsure system works before trial (previous hearing had trouble with system cutting out intermittently)." M.W. was provided with a hearing assistance headset at the beginning of the hearing. On appeal, however, M.W. asserts that the accommodation provided was "woefully inadequate" and argues that he was unable to hear during crucial portions of the proceeding. The State responds that M.W.'s claim is not preserved and, alternatively, without merit. We agree with the State.

The record reflects that M.W. brought his hearing problems to the juvenile court's attention at various times throughout the proceeding. At one point, M.W. informed the court that the device was "not working," but then said to "[g]o ahead." The court clerk attempted to "make it better" and M.W. responded that the device was "a little better," commenting, "I think it's okay." Later during the hearing, M.W. indicated that he was having trouble hearing, and the following exchange occurred between M.W. and the bailiff:

> [M.W.]: I'm having a little -- I'm not hearing this.
>
> THE BAILIFF: Adjust this. It will make it louder. Try that.
>
> [M.W.]: I got a lot of static. Okay. Thank you.
>
> THE BAILIFF: You adjust that to make it louder.
>
> [M.W.]: Sorry?

> THE BAILIFF: You can adjust that, this button, to make it louder in your ears.
>
> [M.W.]: I kept doing that, but it would like fade back out. I'll just work with it.
>
> THE BAILIFF: Do you want to try a different set?
>
> [M.W.]: MA'AM?
>
> THE BAILIFF: Do you want to try a different set?
>
> [M.W.]: Um, sure. I mean, I don't want to --
>
> THE BAILIFF: It's okay.
>
> [M.W.]: -- make things hard for me. Okay. Thanks.
>
> THE BAILIFF: Is that better?
>
> [M.W.]: Yes, ma'am, much.
>
> THE COURT: Okay, great. Okay.[6]

At various other points of the proceeding, M.W. informed the court that he was unable to hear certain portions of testimony or questioning. For example, during Mr. Williams's testimony, M.W. asked Mr. Williams to speak up. At other times, M.W. asked the court to repeat itself when he had been unable to hear what was said. The record reflects that, upon M.W.'s request, the questions, comments, and testimony were repeated for M.W.'s benefit. M.W. did not, at any point, complain that the various actions undertaken by the court were inadequate or ineffective in enabling him to hear and participate in the

[6] The record does not reflect precisely what occurred to make things "much" better for M.W. The State posits that there was an "apparent substitution" with a different hearing device, while M.W. comments that the device was either repaired or replaced, but the record does not indicate what occurred. Critically, M.W. acknowledged that he could hear "much better," regardless of the cause of the improvement.

proceeding. Accordingly, this issue is not properly before us on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . .").

Furthermore, assuming *arguendo* that M.W. properly preserved this issue for our review, we perceive no merit to M.W.'s contention that he was deprived of due process. To be sure, M.W., as a criminal defendant, held a constitutional right to participate in the proceeding and confront witnesses through cross-examination. Indeed, "[t]he ability to understand the proceedings is essential to a defendant's right to a fair trial." *Biglari v. State*, 156 Md. App. 657, 665 (2004). In this case, however, the juvenile court appropriately accommodated M.W.'s hearing disability by providing a hearing assistance device, repeating or directing parties to repeat questions or comments when indicated, and assisting M.W. when he had trouble utilizing the assistance device. In our view, the record as a whole indicates that M.W. was fully able to participate in the proceeding below.

III.

M.W. further raises three additional arguments relating to his constitutional rights to due process and a fair hearing. Specifically, M.W. asserts that the juvenile court (1) improperly shifted the burden of proof to the defendant, (2) applied the wrong evidentiary standard, and (3) denied M.W. his right to compel and cross-examine witnesses. We find none of M.W.'s allegations of error persuasive, but address each in turn below.

A. Burden of Proof

M.W. asserts that the juvenile court committed reversible error by shifting the burden of proof to M.W. to prove that C.W.'s absences were lawful. Once again, our review of the record as a whole leads us to reject M.W.'s allegation of error.

M.W. appeared *pro se* before the juvenile court, and, at various stages throughout the hearing, the juvenile court informed M.W. as to the appropriate procedures to be followed. For example, the juvenile court answered M.W.'s questions about sequestration of witnesses and explained the process by which a party could ask for witnesses to be sequestered. The juvenile court also explained to M.W. what types of questions fell within the scope of cross-examination, and further explained that M.W. could recall a witness in his own case-in-chief to address other topics.

After the State completed its case-in-chief, the court explained to M.W. that "[t]he State has finished their case, so they're done. Now it's your turn." Towards the conclusion of the defense case-in-chief, the juvenile court summarized the evidence that had been presented before providing M.W. an additional opportunity to present evidence. The court explained:

> I'll give you a brief summary. The State has to prove that you are the parent of the child, the child is between 5 and 17 at the time of the alleged failure to take to school. The child's a resident of Calvert County, and basically you don't have a good reason for not putting the kid in school.
>
> That's really what the defense is -- that's your defense, so that's basically it, and [the State is] saying that being absent for 22 days out of the entire year is roughly equivalent to 13 percent of the . . . . entire school year, and that falls squarely within the guidelines or the requirements of 10 percent set by

> the county because 10 percent is a threshold where he becomes a habitual truant.
>
> So they have proven up to this -- I'm just going to tell you. They've proven *prima facie* that you are -- or the child wasn't in school for over 10 percent for the entire school year.
>
> **So now the burden shifts to you, if you want to put it on, as to what the defense is.** Why is that? And that's why I've been asking you since 20 past 2:00 when you sat down to testify, Okay, I've got 22 days. Of those 22 days, they've got this wrong. These are completely erroneous dates when the child was either late or absent because, Judge, on this date something happened.
>
> That's what usually this comes down to. The parents tell me what happened on these various dates, and then they refute what the State has to say. I've asked you over and over again pointing out certain days to tell me, and your come back has been: 1, about your job, and 2, about the child's physical health.
>
> Now you understand what the State has shown me and what the State has to legally prove, I'm giving you one last opportunity to come back by way of testimony, if you want to do it by testimony, and not argument, [h]ere's what was going on during this time period.
>
> I can't put it any simpler than that.

(Emphasis added.)

In our view, the juvenile court's reference to the "burden shift[ing] to" M.W. was an inartfully expressed attempt to explain to a *pro se* defendant in a colloquial manner that it was his opportunity to present his defense. Indeed, the record reflects that the juvenile court properly understood that it was the State's burden to prove all of the elements of the offense. For example, at the beginning of M.W.'s cross-examination of Mr. Williams, the court explained to M.W. that "the State has the obligation of proving that you're guilty of

these offenses, so the State puts all of its evidence first." The juvenile court's ruling indicated that "[t]he State's proven" the elements of the offense. The single allegedly improper statement pointed to by M.W. does not persuade this Court that the State improperly shifted the burden to the defense. The record as a whole indicates that the juvenile court properly applied the correct burden of proof. Accordingly, we reject M.W.'s contention that the juvenile court committed reversible error by shifting the burden of proof to M.W.

B. Evidentiary Standard

M.W. further asserts that the juvenile court improperly utilized the "clear and convincing evidence" standard rather than the applicable standard of "beyond a reasonable doubt." The State acknowledges that the juvenile court at one point referenced the wrong evidentiary standard, but asserts that the record as a whole reflects that the juvenile court applied the correct standard when making its ultimate determination with respect to whether the State proved M.W. violated the compulsory school attendance law. We agree with the State.

The following exchange occurred between the juvenile court and the prosecutor when the juvenile court issued its verdict:

> [THE COURT:] The State's proven count 1 by clear and convincing evidence. Quite frankly, they've done it beyond a reasonable doubt, but by clear and convincing evidence, and so the [c]ourt will enter a -- what is the correct term? Is it a finding of involved?
>
> [THE PROSECUTOR]: It's involved. It's a juvenile case. The standard is beyond a reasonable doubt.

> THE COURT: It is a beyond a reasonable doubt. Beyond a reasonable doubt that Mr. Wall is involved in count 1.

Although the juvenile court did at one point reference the wrong evidentiary standard, critically, the juvenile court expressly found that the State had proved the commission of the offense beyond a reasonable doubt. Indeed, even when the court mistakenly mentioned the clear and convincing evidence standard, it explained that it believed that the elements had been proven beyond a reasonable doubt. Because the juvenile court's actual conclusion was that the State proved, beyond a reasonable doubt, that M.W. violated the compulsory attendance law, we reject M.W.'s contention that the juvenile court applied an incorrect evidentiary standard.

C. Right to Compel and Cross-Examine Witnesses

M.W.'s final contention is that the juvenile court denied him his constitutional right to confront and compel witnesses by not allowing him an opportunity to review and present as evidence documents he subpoenaed for his defense. Again, we are unpersuaded.

At the beginning of the hearing, M.W. commented that he had asked for all [school] records concerning C.W. and that he had been informed by the clerk's office that the material [he] subpoenaed from the Calvert County Public Schools could not be delivered until a court date. The prosecutor responded that one of the witnesses M.W. had subpoenaed, and who was present at the courthouse that day, was superintendent of Calvert County Public Schools Dr. Daniel Curry. The prosecutor commented that Dr. Curry had brought "some documentation with him." The prosecutor advised that he had not "been provided any of the information that was subpoenaed" and explained that he was

"concerned that it [wa]s not relevant to the issue that's before the [c]ourt." The prosecutor emphasized that the issue before the court was "very limited" and based only upon whether C.W. "was attending school regularly between August 2014 and April 2015." The juvenile court reserved "on what the superintendent has before any of it's disclosed."

M.W. requested a continuance "in order . . . to receive that material and to bring it into [his] defense." The State opposed the request, arguing that it was M.W.'s "responsibility to get that information and prepare for today's date." The court denied M.W.'s request, explaining that "the superintendent and the other witnesses may have documentation with them, and you can review that if it comes to it prior to their testimony or prior to any examination on those issues, but because the matters have been pending for so long . . . . I don't believe a continuance is warranted."

At the beginning of the defense case, M.W. indicated that he wished to call Dr. Curry in his case-in-chief. The court asked M.W. for a proffer, inquiring, "why are you going to bring in the superintendent now? What do you hope to get out of him today?" M.W. responded that he wanted C.W.'s individualized education plan records as well as C.W.'s "general file from Saint Leonard Elementary." M.W. further indicated that he wanted records from his previous conversations with Dr. Curry.

The court asked M.W. about the relevance of the various documents to the specific issues before the court relating to C.W.'s absences in 2014 and 2015. M.W. responded that the materials were "important" to illustrate that the "situation" was "wholly a concoction" of the Saint Leonard Elementary principal. The court further pressed M.W. to explain the relevance of the proffered documents, inquiring "how does that account for any of the

absences that the State has shown"? M.W. responded that "[t]he trap was set" because C.W. was not required, due to absences, to repeat either first or second grade and the school was "going to pass [C.W.] anyway" regardless of the number of absences he incurred. M.W. further proffered that he planned to elicit evidence relating to the racial makeup of the Calvert County Public School system, arguing that it was relevant to the principal's "ideas about people" and the bias against C.W. due to his "mixed race heritage."

The court explained that it did not see how many of the issues proffered by M.W. were relevant to the issues before the court, commenting that M.W. "seem[ed] to want to talk about a lot of things from personal animus against [him] to now sociological issues." The court, however, explained that it was "not sure what [M.W.'s] defense [wa]s as far as not getting the young man to school on time. That's really what my focus is." In response to M.W.'s proffer, the court explained that it would "take each of [M.W.'s] questions as they come." The court advised M.W., "[i]f I find that [your questions are] irrelevant to any of the issues that I'm going to resolve today, I'm going to stop you." The court again reiterated that the issue before the court was quite narrow, emphasizing that the court "would be very interested to hear what the evidence is and how you feel it impacts your ability or non ability to get your child to school. That's really the issue." In response, M.W. again sought to broaden the issue, arguing:

> [T]his attendance suit is a direct result of [the principal] trying to get back at a parent who is proactive and told her [that] her disciplinary reports were not right. That is the bottom line.
>
> You can't -- if you try to -- and that State's Attorney of course wants you to concentrate on the days missed and so forth, but they are part of a plan to hurt me and hurt [C.W.]

The court responded that "the State is obligated to focus on the days missed and the days absent because that's what they're accusing you of."

During M.W.'s examination of Dr. Curry, Dr. Curry produced a satchel containing approximately 5,000 pages of documents, which Dr. Curry explained were "about [C.W.'s] school records." On appeal, M.W. argues that the juvenile court "failed to provide the defendant with the opportunity to review the documents prior to the examination as it had assured M.W. it would." M.W. emphasizes that "[e]ven after the court learned that the disclosure consisted of five thousand . . . pages" of documents, it will did not provide M.W. the opportunity to review them. M.W. asserts that his right to compel witnesses was meaningless because he had no chance to review the evidence and confront the witnesses with the evidence after review.

Indeed, M.W. did not ask for additional time to review the documents at that point, nor did M.W. seek to admit any of the documents into evidence. The juvenile court had assured M.W. that it would address the issues relating to the documents as they arose, but immediately after Dr. Curry produced the documents, M.W. indicated that he believed that Dr. Curry should be excused, commenting, "I don't see any need for him to be here . . . ." Dr. Curry was excused immediately thereafter. M.W. did not, at that time, seek a continuance to review the materials after they were produced.

M.W. cites the case of *Kelly v. State*, 392 Md. 511, 535 (2016), in support of his assertion that the circuit court deprived him of his right to confront witnesses because it did not allow him time to review the documents produced by Dr. Curry. M.W. cites *Kelly*

for the principle that "[t]he right to compulsory process does not end with the ability to subpoena witnesses . . . that right encompasses the ability to elicit testimony from those witnesses at trial." M.W. fails to explain, however, how *Kelly* is applicable to the present case. The trial court in *Kelly* refused to allow the defendant's witnesses to testify based upon the defendant's proffer regarding the witnesses' testimony. *Id.* at 537. The Court of Appeals explained that "the trial judge should have allowed the witnesses to testify and rule on the admissibility of their testimony, if proper objections were made, during questioning by the defense, not before. His ruling upon that testimony based upon petitioner's proffer was premature, specially in light of the fact that two witnesses were present, ready, and able to testify." *Id.* at 539. The Court's holding focused on the prematurity of the trial court's conduct. Indeed, the Court recognized that there are limitations on the right to compulsory process:

> The right of compulsory process, under both the Federal and State Constitutions, though fundamental, is not absolute. It does not, for example, confer a right to present inadmissible evidence, and thus is not violated if a court declines to subpoena, grant a continuance to locate, or otherwise assist in the apprehension or production of a missing witness, in the absence of a showing that the testimony of that witness would be both admissible and helpful to the defense.

Id. at 537 (quoting *Wilson v. State*, 345 Md. 437, 450 (1997)).

For these reasons, we perceive no merit to M.W.'s contention that his right to compel and confront witnesses was infringed upon by the juvenile court. The juvenile court advised M.W. that it would address the issues relating to review of subpoenaed materials "if it comes to it" at the appropriate time, and M.W. never again raised the issue.

Furthermore, M.W. has not indicated, before the juvenile court or before us, how any of the subpoenaed documents are relevant to the factual issues that were before the fact-finder. Accordingly, we reject M.W.'s final appellate contention, and, for the reasons stated herein, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.